

## REMARKS

Claims 1, 2, 7-18, 23-26 are pending. By the present amendment, claims 3-6 and 19-22 and 27 are cancelled.

### Rejections Under 35 U.S.C. § 102 and 103

Claims 1-5, 8, 9, 13, 14, 19, 22, 23, 26 and 27 stand rejected under 35 U.S.C. §102 in view of McFall. Claims 3, 4, 19, 22 and 27 have been deleted to avoid the Examiner's rejection. The Examiner is respectfully requested to reconsider this rejection with respect to the remaining claims in view of the amendments to independent claims 1 and 23. Claims 1 and 23 now recite that the first longitudinal rail portion includes a channel to receive the pickets that has the unique structure, illustrated particularly in Figures 3 and 4, of a pair of spaced side walls extending inwardly toward each other as angled side wall portions, and then extending as inset, planar side wall portions in a spaced, parallel configuration. This structure is not shown or suggested by McFall. Instead, McFall relies on a rivet 36 that extends through the generally vertical side walls of an inner channel 30 and a picket member 18 to create a connection that deforms the channel side walls and creates a pinched structure adjacent each picket member. Such a structure with concave side walls is subject to lateral rocking of the picket due to flexing of the side walls. In contrast, the railing system of the present invention is adapted to support each picket at planar, inset side wall portions that prevent rocking of the side rails. In addition, the inset side walls define a pre-formed recessed region at either side of the first longitudinal rail portion that accommodates the protruding end of the fastener used with the present invention as described at page 6, lines 16-19 of the application as originally filed. In the McFall arrangement, a recessed region is created by virtue of pinching of the inner channels side walls, but this curvature leads to the rocking problems discussed above. In view of foregoing structural differences between railing system recited in amended claims 1 and 23 and that of McFall and the advantages such differences convey to the system of the present invention, it is applicant's position that claims 1 and 23 are patentably distinguishable over the prior art. Furthermore, claims 2, 8, 9, 13, and 26 derive patentable significance from their dependence, directly or indirectly, on claims 1 and 23, respectively.

In addition, claims 1, 8-13, 19-22 and 27 were rejected under 35 U.S.C. §102 as being anticipated by Murdaca. Claim 19-22 and 27 have been deleted to avoid the Examiner's rejection. Amended claim 1 recites a second longitudinal rail portion that fits over the first rail portion to define an assembled rail member. The first rail portion is now limited to the specific structure with angled and inset planar side walls of amended claim 1. Murdaca does not disclose a first rail portion having the structure recited in amended claim 1 nor does Murdaca teach or suggest the fasteners recited in amended claim 1. Like McFall, Murdaca relies on rivets. Furthermore, Murdaca relies on a construction that includes two separate siding strips 32 that fit over an underlying railing 16, 18 to which the pickets are attached. The siding strips represent a different, more complex structure that require alignment and interfitting from either side of the railing structure. The siding strips of Murdaca cannot be considered equivalent to the second longitudinal rail portion of the present invention which is a single, unitary piece with a longitudinal surface and side walls fittable over the first rail portion. In view of the foregoing comments, applicant requests that the Examiner's anticipation objection to claim 1 be withdrawn. In addition, claims 9-13 derive patentable significance from their dependence, directly or indirectly, on claim 1.

Claims 6 and 7 were rejected under 35 U.S.C. 103(a) as being obvious and unpatentable over McFall in view of Schuplin. The Examiner acknowledges that McFall uses rivets as fasteners but argues that Schuplin teaches a fastener similar to that used in the present invention. The Examiner considers that it would be obvious to one of ordinary skill in the art to use the Schuplin fastener with McFall. Claim 6 has been deleted and its subject matter incorporated into amended claims 1 and 23. Applicant considers that claim 7 is not rendered obvious by McFall in combination with Schuplin. It is incorrect to combine the teachings of McFall and Schuplin as the McFall arrangement does not contemplate using any fastener other than a rivet or the like with ends that do not protrude from inner channel 30. McFall does not show a region, other than the small void created by the pinching effect of the fastener, in the outer channel 32 to accommodate a fastener with ends that extend significantly from the inner channel. Therefore, it is applicant's position that it would not be obvious to combine the teachings of McFall and Schuplin as McFall is not capable of using such a fastener without significant modification to the structure of the inner or outer channel or both.

Claims 11, 12, 20, 21, 24 and 25 were rejected under 35 U.S.C. 103(a) as being obvious and unpatentable over McFall in view of Murdaca. The Examiner concedes that McFall does not disclose the use of aluminum for the first and second rail portions, but relies on Murdaca to argue that it would be obvious to use aluminum in the railing system of McFall. Claims 20 and 21 have been deleted to avoid the Examiner argument. As argued above, neither McFall nor Murdaca teach or suggest the railing system now recited in amended claims 1 and 23, and it is applicant's position that claims 11, 12, 24 and 25 derive patentable significance from their dependence on claims 1 and 23.

Claims 15 and 16 were rejected under 35 U.S.C. 103(a) as being obvious and unpatentable over McFall in view of Seiler. The Examiner relies on Seiler for its disclosure of a cap system fittable over an assembled rail member. It is applicant's position that the subject matter of claims 15 and 16 are patentable due to their indirect dependence on claim 1. Seiler shows a prefabricated railing system with interlockable components parts. Otherwise, Seiler does not address the deficiencies of McFall as a reference in that neither McFall nor Seiler teach or suggest the railing structure with angled and parallel, inset side wall portions and the fastening arrangement of claim 1.

Claims 17 and 18 were rejected under 35 U.S.C. 103(a) as being obvious and unpatentable over McFall in view of Reid. The Examiner relies on Reid to show a connection member for joining one assembled rail member to an adjacent rail member. Once again, it is applicant's position that the subject matter of claims 17 and 18 are patentable due to their dependence, directly or indirectly, on claim 1. Reid shows a rail fence assembly having a unique joint for joining together fence sections. Otherwise, Reid does not address the deficiencies of McFall as a reference in that neither McFall nor Reid teach or suggest the railing structure with angled and parallel, inset side wall portions and the fastening arrangement of claim 1.

## **Conclusion**

In view of the foregoing amendments to the disclosure, claims and drawings, it is applicant's position that the present application is now in condition for allowance and notice to that effect is courteously solicited. Applicant requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Stephen M. Evans", with a long horizontal flourish extending to the right.

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